

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: NATIONAL ARBITRATION
FORUM TRADE PRACTICES
LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

MDL NO. 10-2122 (PAM/JSM)

**ORDER GRANTING PRELIMINARY
APPROVAL OF STIPULATION AND
AGREEMENT OF SETTLEMENT**

Before the Court is Plaintiffs' Motion for Order for Preliminary Approval of Stipulation and Agreement of Settlement, Docket No. 79. Having reviewed the briefing and heard the arguments of the parties, the evidence, and the complaint in this matter,

The Court makes the following **ORDER**:

1. Preliminary approval of the Settlement reached by the Parties is GRANTED;
2. The Settlement Class specified in the Settlement Agreement, pursuant to Fed. R. Civ. P 23(a) and 23 (b)(2) is CERTIFIED;
3. The Plaintiffs' Counsel Group as defined by the Settlement Agreement, paragraph 1.7, is hereby APPOINTED as Class Counsel and Lead Plaintiffs as Class Representatives;
4. The form and method for providing notice of the Settlement to the Class and to the Paid-in-Full Group is APPROVED;
5. The following deadlines for the remainder of these proceedings are adopted as follows:
 - a. By May 4, the Plaintiffs' Counsel Group shall ensure that the Notice Administrator initiates the notice program described in the Declaration of Alicia Gehring, Media Director for Kinsella Media;
 - b. By June 21, the Plaintiffs' Counsel Group shall file any memorandum in support of its Fee Petition;

- c. By May 25, and after Plaintiffs provide a W-9 form to Defendants, Defendants shall cause to be placed the sum of \$3,200,000.00 into the M&I Bank business money market index escrow account entitled National Arbitration Forum Litigation Settlement Account, account number 0056343441, in Minneapolis, Minnesota, c/o Zimmerman Reed, PLLP, co-signers to be Charles S. Zimmerman and David M. Cialkowski, funds to be distributed according to the terms of the Settlement Agreement;
 - d. By July 5, any class member objecting to the Settlement must file and serve on all parties of record a written statement setting forth the basis for the objection, any memorandum in support of the objection, along with accompanying affidavits presenting facts supporting the objection or, if such facts are unavailable, an affidavit or declaration specifying reasons the objector cannot present facts essential to justify his or her objection;
 - e. By July 5, any member of the Paid-in-Full Group wishing to opt out of the Settlement must, by U.S. Mail postmark on that date, notify the Notice Administrator in writing of his or her decision and provide the Notice Administrator with written proof of membership in the Paid-in-Full Group;
 - f. By July 5, the Notice Administrator shall inform the Parties of the number of opt-out requests received to date;
 - g. By July 29, the Plaintiffs' Counsel Group shall file and serve an Affidavit of Notice Publication, detailing what efforts were taken to notify class members of the pendency of this Court's consideration of the proposed Settlement Agreement; and
 - h. On August 4, at 11 a.m., this Court will hold a hearing to consider Final Approval of the Settlement Agreement.
6. Upon final approval, the Court will adopt the following facts as the Court's findings:
 - a. The National Arbitration Forum, Inc. (NAF, Inc.) is a privately held, for-profit, Minnesota corporation. National Arbitration Forum, LLC (NAF, LLC) is a privately held, for-profit Delaware limited liability company with its principal operations in Minnesota.

- b. Investor, J. Michael Cline, is the founding managing partner of Accretive, LLC (Delaware), a Delaware limited liability company based in New York, New York. Accretive is the management company for several private equity funds.
- c. Mann Bracken, LLP is a Delaware limited liability partnership. Mann Bracken, LLP is the successor by merger of Mann Bracken, LLC, Wolpoff & Abramson, LLP, and Eskanos & Adler, P.C.
- d. On or about November 20, 2006, Accretive formed MB Solutions Acquisition Corp. (MB Acquisition). On or about October 26, 2006, MB Solutions, LLC (MB Solutions) was formed as a Delaware limited liability company. On November 29, 2006, Mann Bracken, LLC and MB Solutions, among others, entered into a number of agreements including (i) an Equity Purchase Agreement, pursuant to which MB Acquisition acquired an ownership interest in MB Solutions, and (ii) a Contribution Agreement, pursuant to which certain non-legal services assets (as defined in the Contribution Agreement) were acquired by MB Solutions from Mann Bracken, LLC. Effective November 29, 2006, Mann Bracken, LLC entered into an Administrative Services Agreement and a Legal Services Agreement with MB Solutions. MB Solutions changed its name to Axiant, LLC on or about July 12, 2007.
- e. On June 28, 2007, MB Solutions entered into an Asset Purchase Agreement with Eskanos & Adler, P.C. (Eskanos & Adler), among others, pursuant to which MB Solutions purchased from Eskanos & Adler certain non-legal services assets as defined in that agreement. On July 16, 2007, Axiant entered into a Contribution and Sale Agreement with Wolpoff & Abramson, LLP (Wolpoff & Abramson), among others, pursuant to which Axiant purchased from Wolpoff & Abramson certain non-legal services assets as defined in that agreement.
- f. Following the consummation of the foregoing transactions, the Accretive funds, through two holding companies, held a 68.7% equity ownership interest in Axiant. Separately, the three law firms were merged into a single law firm on or around July 1, 2008.
- g. In June 2007, Accretive created Agora Fund I, GP, LLC (Agora or Agora General Partner). Agora is an investment fund managed by Accretive and is the general partner of certain private equity funds including Agora Fund I, LP, Agora Fund I Coinvestment Partners, LP, and Agora Fund I Holding Partners (collectively the “Agora Funds”). Prior to July 28, 2008, J. Michael Cline served as the managing member of the Agora General Partner.

h. Effective June 27, 2007, NAF, Inc. became a holding company, owning 100% of NAF, LLC and 60% of Dispute Management Services, LLC (DMS) (d/b/a Forthright). In exchange for an investment of approximately \$42 million, the Agora Funds acquired a 40% interest in DMS. Commencing on June 27, 2007, NAF, LLC provided neutrals and forums for arbitrations and DMS provided all back office and administrative services to support NAF, LLC, the arbitration entity, pursuant to the terms of a service agreement.

Dated: April 28, 2011

s/Paul A. Magnuson
Paul A. Magnuson
United States District Judge